



PUBLIC NOTICE

Federal Communications Commission
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DA 05-1356

Released: May 16, 2005

**DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL
NUNC PRO TUNC OF EMPIRE ONE TELECOMMUNICATIONS, INC., DEBTOR-IN-
POSSESSION, TO EMPIRE ONE TELECOMMUNICATIONS, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-168

Comments Due: May 30, 2005

Reply Comments Due: June 6, 2005

On April 1, 2005, Empire One Telecommunications, Inc., Debtor-in-Possession ("DIP") and Empire One Telecommunications, Inc. ("EOT") (together referred to as "Applicants"), filed an application, pursuant to section 63.03 and 63.04 of the Commission's rules,¹ requesting authority to provide domestic and international telecommunications services.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because (1) the Applicants and their affiliates combined hold less than a 10% share of the interstate, interexchange market; (2) applicants and their affiliates provide local exchange service only in areas served by dominant local exchange carriers, none of which were parties to the transaction; and (3) neither the Applicants nor their affiliates are dominant with respect to any service.³

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants formally supplemented the original application on April 19, 2005 to provide additional information requested by staff in order to deem the application complete. *See* Amendment to Application on Behalf of Empire One Telecommunications, Inc., Docket No. WC 05-168 (Apr. 19, 2005) ("EOT Amendment"). Applicants provided further clarification via e-mail on May 6, 2005, per staff's request. Applicants have also filed an application for transfer of control associated with section 214 authorization for international services. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R. § 63.03(b)(2)(i).

On April 2, 2001, each of the wholly-owned subsidiaries of Sonus Communications Holdings, Inc., filed a Petition for Relief under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York.⁴ At the time of the bankruptcy filing, the subsidiaries affected were as follows: Empire One Telecommunications, Inc., holder of the section 214 authorization at issue; Sonus Communications, Inc. ("Sonus"); EOT Telecommunications of Canada, Inc.; and Empire One Power, Inc.⁵ On December 5, 2002, the Bankruptcy Court confirmed a Plan of Reorganization ("Plan") wherein exit financing was secured from EOT Lending Corp, equity was distributed in the reorganized debtor, and EOT emerged as the surviving entity, with all other entities being dissolved. At the time, Applicants did not seek Commission approval for the transfer of ownership that occurred when EOT emerged from bankruptcy. Accordingly, they seek this approval *nunc pro tunc*.⁶ Applicants assert, nevertheless, that the transaction enabled EOT to emerge from bankruptcy as a more effective competitor offering affordable telecommunications services to U.S. consumers. Accordingly, the Applicants respectfully submit that the transaction served the public interest and was in the best interest of EOT.

At the time the transaction was completed through the Chapter 11 reorganization plan, DIP was a Delaware corporation and a wholly-owned subsidiary of Sonus Communications Holdings, Inc. EOT, the sole surviving entity that emerged from the reorganization, is a Delaware corporation and a provider of long distance, local, internet access and paging services to both residential and business customers. EOT holds domestic and international Section 214 authority granted by the Commission. Under the reorganization plan approved and confirmed by the Bankruptcy Court, 100,000 shares of common stock were distributed, as follows: Paul Butler, a U.S. citizen (15.50%); Herbard Ltd., a British Virgin Islands company (51.91%); and the remaining interest (32.59%) held by a number of smaller investors, none of which owns 10% or more of EOT. Hebard Ltd. is wholly-owned by AE Finance, also a British Virgin Islands company, which is, in turn, controlled (99%) by Phyllis Quasha, of Nassau, Bahamas. No other entity holds a 10% or greater direct or indirect interest in EOT.

EOT asserts that the transaction for which it now seeks approval *nunc pro tunc* served the public interest. It states that the transfer was purely a stock acquisition, and thus did not result in any immediate change in the rates, terms or conditions of the services provided to EOT customers. It further claims that customers were not affected by the 2002 transfer of control, as it assured that there was no disruption of service due to the bankruptcy, and was virtually transparent to EOT's customers. EOT also states that the transaction did not adversely affect its managerial or technical qualifications, but rather enhanced its financial qualifications, enabling EOT to emerge from bankruptcy as a more effective competitor offering high quality, affordable

⁴ Case number 01-11894- AAJG.

⁵ See Notice of Bankruptcy Reorganization filed with the Federal Communications Commission on January 27, 2005.

⁶ Applicants explain that their failure to seek Commission authority for the transfer of control at the time of the reorganization was inadvertent. See EOT Amendment at 2.

telecommunications services to U.S. consumers. EOT contends that it would be in the best interest of EOT and its customers for the Commission to grant approval of the previously consummated transfer of control.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before May 30, 2005** and **reply comments on or before June 6, 2005**.⁷ Unless otherwise notified by the Commission, this application will be deemed granted on the 31st day after the date of this notice.⁸ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C.

⁷ See 47 C.F.R. § 63.03(a).

⁸ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: www.bcpweb.com; phone: 202-488-5300 fax: 202-488-5563;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Alex Johns, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C311, Washington, D.C. 20554; e-mail: alexis.johns@fcc.gov;
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone: 202-488-5300, fax: 202-488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Alex Johns at (202) 418-1167.

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